IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.2067 OF 2002

Rangasamy Gounder .. Petitioner

-vs-

1.The State of Tamilnadu rep.by
the Inspector of Police,
Cheyur Police Station
Avinasi Taluk
Coimbatore District

2. Shanmugam .. Respondents/Complainant & accused

This Revision is filed against the Judgment of the learned Additional District and Sessions Judge(Fast Track Court No.5) Tirupur in S.C.No.229 of 2001 dated 30.7.2002.

For petitioner : M/s.M.Sathyanarayanan,
N.S.Sivakumar

For respondents : Mr.V.R.Balsubramanian
Addl. Public Prosecutor-R1
Mr.K.Goviganesan-R2

ORDER

This revision has been preferred by the complainant (P.W.2), the father of the deceased against the Judgment in S.C.No.229 of 2001 on the file of the Court of Additional District and Sessions Judge(Fast Track Court,No.5), Tirupur dated 30.7.2002. The case has been charged against a single accused who is none other than the husband of the deceased Mohanarani, the youngest daughter of the complainant/P.W.2.

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2)The case of the prosecution in a nutshell is as follows:

The marriage between the deceased and the accused took place on 15.9.1996. The accused had often raised loan by pawning the jewels of his wife Mohanarani and has also demanded more dowry from the parents of the deceased Mohanarani which had driven her to take an extreme step of committing suicide on 18.8.1998 at about 6.00p.m., in her house. Hence the accused has been charged under Section 304 (B) and 498 A IPC.

3) The case was taken on file by the trial Court and on appearance of the accused on summons, copies under Section 207 Cr.P.C were furnished to the accused and when charges were framed under Section 304 (B) and 498 A IPC and questioned the accused pleaded not guilty.

4) On the side of the prosecution P.Ws 1 to 12 were examined. Exs P1 to P7 were exhibited. No material objects were marked.

5) P.W.1 is the private doctor who had seen the unfortunate girl Mohanarani brought to the hospital by her husband/accused herein on 15.8.1998 at about 8.00p.m alleging that she had consumed poison . On examination, he (P.W.1)found that the girl had already died and P.W.1 had advised the accused to take her to the Government Hospital.

5a) P.W.2 is the father of the deceased,who would depose that the deceased Mohanarani is his youngest daughter and the marriage between the accused and Mohanarani took place on 15.9.1996 at a temple. At the time of marriage, he had presented 20 sovereigns of gold ornaments and also Susuki Motor cycle and that after the marriage, in order to discharge the hand loan borrowed by the accused, he used to pawn his wife's ornaments and also used to demand more money from him(P.W.2) to meet the agricultural expenses. P.W.2 would state that his daughter used to complain that the accused found fault with her since she is incapable of bearing a child and that he came to know on the occurrence date that his daughter Mohanarani had committed suicide by consuming poison and that he along with his other daughters, sons and other relatives went to the Government Hospital and saw the corpse of his daughter where he informed that the corpse was brought by the husband of Mohanarani/accused and left at the hospital and afterwards, he never turned to the hospital. Ex P1 is the complaint preferred by him(P.W.2).

5b) P.W.3 is the wife of P.W.2. She has also corroborated the evidence of P.W.2 to the effect that very often the accused used to pawn the jewels of her daughter to raise loans.

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5c) P.W.4 is the sister of the deceased Mohanarani. P.W.4's evidence is also in the line of the evidence of P.W.2 and P.W.3 to the effect that after the marriage the accused used to pawn the jewels of the deceased to raise loan and she came to know about this through her deceased sister.

5d) P.W.5 is the brother of the deceased. He would depose that the accused had pledged the jewels of the deceased in a bank and raised loan.

5e) P.W.11 is the then Deputy Superintendent of Police of Avinashi Sub Division. According to him, P.W2 came to the police Station on 19.8.1998 and preferred Ex P1 complaint and on the basis of the said complaint, he had registered a case under Crime No.258/1998 under Section 174 Cr.P.C. After registering the case, he took up investigation and proceeded to the place of occurrence and had drawn Ex P6 rough sketch .

5f)P.W.9 is the Head Constable , who had registered the case on the basis of Ex P1 complaint preferred by P.W.2 . Ex P4 is the first information report.

5g) P.W.12 is the successor of P.W.11. On the basis of the inquest report of the Sub Collector,Tirupur P.W.11 had altered the Sections of law to 498A and 306 IPC.

5h) P.W.6 is the Postmortem constable, who had taken the corpse of Mohanarani from the hospital at Avinashi to the Government Hospital at Tirupur. After the post mortem, he had handed over the clothes taken from the corpse to the Inspector of Police.

5i)P.W.7 would admit that Ex P2 observation Mahazar contains his signature . Apart from this, he has not supported the case of the prosecution. Hence he was treated as a hostile witness.

5j) P.W.8 is the doctor who had conducted postmortem on the corpse. Ex P3 is the post mortem report. The doctor has opined that due to consumption of pesticides, the deceased would have died 16 to 18 hours prior to the post mortem.

5k)P.W.10 is the Revenue Divisional Officer who had conducted inquest on 19.8.1998 at about 10.00a .m., at the mortuary of the Government Hospital, Tirupur. Ex P5 is the inquest report. In Ex P5, P.W.10 has stated that Mohanarani had died due to the consumption of poison.

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5l) P.W.13 had continued his investigation and examined the doctor as well as the Judicial Magistrate who has recorded the dying declaration and after completing the formalities, P.W.13 had filed the chargesheet against the accused on 31.3.1999 under Section 498A and 304 (B) IPC.

6. When incriminating circumstances were put to the accused, the accused would totally deny his complicity with the crime.He had examined three witnesses on his side. Exs B1 to B3 were marked.

7. After going through the oral and documentary evidence, the learned Sessions Judge has come to a conclusion that the guilt against the accused under Sections 498A and 304(b) has not been proved beyond any reasonable doubt and consequently giving the benefit of doubt to the accused, the learned Sessions Judge has acquitted the accused of all the charges. Against the findings of the learned Sessions Judge, P.W.2 the father of the deceased Mohanarani had preferred this revision.

8. Now the point for determination in this revision is whether the findings of the learned trial Judge is manifest of error of law or procedure or perverse in nature to warrant any interference from this Court.

9. Heard Mr.N.S.Sivakumar,learned counsel appearing for the revision petitioner, Mr.V.R.Balsubramanian, learned Additional Public Prosecutor appearing for the State-R1 and Mr.K.Goviganesan, learned counsel appearing for R2 and considered their rival submissions.

10.The Point:

ExP1 the complaint is bereft of any allegation of dowry harassment against the accused. On the basis of Ex P1 complaint a case under Section 174 Cr.P.C. alone was registered. Only in the evidence of P.Ws 2 to 5, the father, mother, sister and brother of the deceased respectively would depose that the accused had pawn the jewels of the deceased and raised loan . As rightly observed by the learned Sessions Judge, pawning the jewels of the wife and raising loan to discharge the subsisting debt is not an offence under any provisions of law. Only in the evidence of P.Ws 2 to 5 would say that the accused subjected the deceased for cruelty but the above said witnesses have not mentioned the exact date or time of the said alleged cruelty meeted at the hands of the accused by the deceased. No neighbours were examined as the prosecution witnesses to prove that there were frequent quarrel between the deceased and the accused in connection with the demand of dowry.

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11. The learned counsel appearing for the revision petitioner would contend that the marriage itself was not consummated and putting the blame on the deceased, the accused used to torture her. If it is so, then the remedy open to the deceased is to file a petition before the family Court for divorce on the ground of cruelty.

12. Yet another flaw noted in the case of the prosecution is the report of the Revenue Divisional Officer(P.W.10) who had conducted the inquest. The Revenue Divisional Officer has conducted inquest on 19.9.1998 at about 10.00 a.m Ex P5 is his report. While deposing before the trial Court, the Revenue Divisional Officer has categorically stated that he has examined the father of the deceased, the brother and sisters of the deceased and also the accused and the mother of the deceased and recorded their statements. But in the cross examination to our dismay,he would admit that the date of the statement of the above witnesses was on 20.8.1998 and not 19.8.1998. So it is clear from the evidence of P.W.10, itself that the statements were not recorded by him (P.W.10) on the date and time of inquest conducted by him ie., on 19.8.1998 at 10.00 a.m., So we cannot give much importance to the report of the Revenue Divisional Officer under Ex P5 .

13. It is pertinent to note from the evidence of P.W.1, the doctor that the accused himself had brought the deceased Mohanarani after the occurrence at 8.00p.m., on 15.8.1998 . If the deceased would have consumed poison at the instigation of the accused, then the natural conduct of the accused would be to run away from the place of occurrence and not to take the victim to the hospital. After knowing that his wife is already dead from P.W.1, the doctor, the accused again took the body to the Government Hospital at Tirupur on the advise of P.W.1. In this regard, there is absolutely no satisfactory evidence let in by the prosecution to show that who brought the corpse of Mohanarani from the private hospital to the Government Hospital.

14. P.W.6 the police constable says that he came to the private hospital and brought the corpse of Mohanarani to the Government Hospital. But P.W.1 the doctor of the private nursing Home had not mentioned in his evidence that he only intimated the police about the corpse brought by the accused. P.W.1 would say that he advised the accused to remove the body to the Government Hospital. But the accused who has examined himself as D.W.1 would depose that he brought his wife Mohanarani to the Private Hospital and after knowing that she is already dead had informed his uncle and also asked his brother in law to go to Seyur Police Station to prefer a complaint and thereafter only the police came there and he had narrated the incident which was reduced to writing by the police. But the statement of the accused has not seen the light of the day in this case. It is pertinent to note that P.W.2, the father of the deceased Mohanarani in the cross examination had admitted that he got back the jewels as well as the Susuki Motor cycle which were presented to the accused at the time of

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marriage. Further there is absolutely no evidence to show that the accused used to pawn the jewels of the deceased very often. No pawn Broker was examined and no Pawn chit was also produced. So only on the basis of the above said irregularities and discrepancies in the prosecution case, the learned trial Judge has come to a correct conclusion that the prosecution has failed to prove the case beyond any reasonable doubt against the accused. Under such circumstances, I do not find any irregularity or infirmity or any perverseness in the findings of the learned trial Judge to warrant any interference from this court. Point is answered accordingly.

15. In the result, the revision is dismissed ,confirming the Judgment in S.C.NO.229 of 2001 on the file of the Court of Additional District and Sessions Judge(FTC No.5)Tirupur.

sg

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Additional District and Sessions Judge
(FTC No.5) Tirupur.

2. -Do- thro' The Principal Session Judge,
Coimbatore

3 The Public Prosecutor, High Court, Madras

4 Inspector of Police, Cheyar Police Station,
Avinasi Taluk, Coimbatore District.

+ 1 C.C. to MR.M.SATHYANARAYANAN, Advocate SR No.25001

+ 1 C.C. to MR.K.GOVI GANESAN, Advocate SR No.24701

HPR (CO)
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